

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Integrity Development and Construction
110 Pulpit Hill Road
Amherst, MA 01002

Owner: Center for Design Engagement

Date application filed with the Town Clerk: August 19, 2009

Nature of request: Request Special Permit to re-issue Special Permit ZBA FY2007-00016, which has expired, for the construction of a two-family dwelling under Section 3.321 and to modify the previously approved location and design of the two-family dwelling under Section 10.33 of the Zoning Bylaw.

Address: 214 Henry Street (Map 6A, Parcel 95, R-N District)

Legal notice: Published on September 9 and September 16, 2009 in the Daily Hampshire Gazette and sent to abutters on September 8, 2009

Board members: Tom Simpson, Hilda Greenbaum, Albert Woodhull

Submissions:

- Project Application Report, ZBA FY2010-00004, dated September 16, 2009;
- The ZBA application and Management Plan, filed with the Town Clerk on August 19, 2009;
- Letter from Assistant Chief Zlogar, dated August 28, 2009;
- ZBA FY2007-00016 (with annotations of plans approved on 9-25-2008), submitted by staff;
- A complete set (reduced to 8 ½ x 11) of the final site plans and Real Estate Agreement approved on September 25, 2008, submitted by staff;
- A Town GIS map showing the location and zoning of the property, submitted by staff;
- A copy of Section 3.204 – Design Review Principles and Standards, submitted by staff;
- The proposed floor plans and elevations prepared by Lugosch Architect, Inc. dated August 18, 2009;
- An undated “comparison plan” showing 2005 approved plans and 2009 proposed plans prepared by Lugosch Architect;
- A Massachusetts Quitclaim Deed transferring ownership from W.D. Cows to the Center for Design Engagement recorded with the Registry of Deeds on October 2, 2009.

Site Visit: September 14, 2009

Tom Simpson, Hilda Greenbaum and Albert Woodhull met with Peter Jessop of Integrity Development and Construction at the site. The Board members observed the following:

- The location of the wooded, vacant parcel, along the east side of Henry Street;
- The location of the southwest corner of the subject property along Henry Street;
- The approximate front property line, approximately 10 feet from the edge of pavement of Henry Street;
- The approximate location the north property line and approximate location of the proposed common driveway;
- The approximate location of the first dwelling unit on the upward sloping portion of the property.

Public Hearing: September 24, 2009

Peter Jessop of Integrity Development and Construction, Kathleen Lugosch, AIA, and Ben Goodale presented the application. Mr. Jessop stated the following:

- The site is currently a wooded, vacant parcel donated by W.D. Cows to the Center for Design Engagement;
- In 2007, a Special Permit was granted to construct a two-family dwelling on the same site on Henry Street;
- Due to the length of time required to transfer ownership of the property, the permit has since expired;
- The approved plans had changed, and were presented to the Building Commissioner;
- The permit allowed for changes to be reviewed by the Board at a public meeting, however, because the permit has expired, a new hearing must be held.

Mr. Goodale stated:

- The previously approved design was a single story structure, where the new design proposes two stories;
- The design was modified to address both economic and environmental concerns including: A) a reduction in the amount of foundation and overall square footage of living space B) a reduction in the amount of cleared area, C) an increase in the amount of solar access, and, D) incorporation of a green roof aids in reducing heating and cooling costs;
- The two units on the property will be owner occupied;
- The location of the units has been shifted to the north and has been re-aligned for purposes of solar orientation, but the units remain connected by a solid foundation and breezeway/storage area;
- The petitioner is applying for a grant for the installation of solar panels.

Ms. Lugosch stated:

- The overall concept is the same: an affordable, environmentally sensitive and innovative two-family dwelling;
- The two units will be condominiums utilizing a shared septic system design that was approved in the expired permit.

Mr. Simpson asked if there is a condominium association document and whether there are any sidewalks proposed from the driveway to the entrances. Mr. Jessop replied that they prepared a draft set of condominium documents as part of the previous permit. Ms. Lugosch stated that sidewalks were not part of the project design.

Mr. Simpson asked what lighting features are proposed. Ms. Lugosch and Mr. Goodale responded that the lighting will be provided at the building exits in accordance with building code requirements and will be downcast. They stated that a separate pole light would not be necessary because the lighting at the exits would be sufficient to illuminate the driveway.

Mr. Simpson asked about the access easement for the driveway on the property to the north. Mr. Goodale stated that the easement is still in place and a copy of the easement will be provided.

Mr. Simpson asked what the fuel source would be, oil or natural gas, and noted that the previous permit required any fuel tanks to be located underground or in the basement. Mr. Jessop stated that the project would likely not need a fuel system, as the heating of the house will come from the solar panels or electric heat. Mr. Simpson stated the potential location of any fuel tanks should be shown on the site plan because the basement has been removed.

Ms. Greenbaum noted that the driveway location had moved to the south and asked about the steepness of the driveway. Mr. Jessop stated that the driveway will be less than the maximum allowed grade of 10 percent.

Ms. Greenbaum expressed concern regarding the reduced size of each dwelling unit and asked if there is a market for three bedroom units of about 1,150 square feet. She requested floor plans showing potential furniture arrangements for the small bedrooms. She noted the aesthetic impact of not having any windows on the second floor of the west elevation, which faces the street. Ms. Lugosch stated that there is a market for smaller, more efficient units and noted that the plan provides the same amount of storage space as the previous plan. She stated that the west elevation is designed without windows to increase and maintain the energy efficient design of the dwelling.

Ms. Greenbaum asked which trees will remain on the site. Mr. Jessop stated that a lot of trees will be cleared from the site for the building, driveway and solar access. He noted that Cowls could legally clear the site of all timber. He stated that they intend to keep a buffer of trees adjacent to Henry Street, but that they did not yet know how much clearing would be required for the septic system. Mr. Goodale noted that the previously approved plan included a much larger footprint and different arrangement that would have required a greater amount of clearing. The Board requested a plan be submitted showing the area to be cleared.

Ms. Greenbaum asked about the added weight of a green roof, how it is maintained, the life expectancy of the rubber membrane under the green roof, and what expense is incurred in replacing the roof if it deteriorates. Ms. Lugosch stated that it has been engineered to meet the building code requirements for weight loads and that some maintenance would be required of the owner.

Mr. Simpson asked if the roof would be pitched to incorporate the solar panels. Ms. Lugosch stated that the roof will be flat to lower the construction costs. Mr. Goodale stated that the solar panels would be inclined slightly more than the roof.

Mr. Woodhull expressed concerns related to the location of the two-family dwelling being far from a busy village center; the nature of the two-family dwelling being separated by a breezeway; the safety of pedestrian traffic on Henry Street; and, potential impact to salamander habitat. Mr. Goodale stated that they share those concerns, but compared the two-family proposal to the by-right development of a single family dwelling and noted that the proposal is for a smaller structure, resulting in more remaining open area on the parcel than is required. Mr. Goodale noted that there are other duplexes that were approved by the Zoning Board with a breezeway connector.

Ms. Greenbaum stated that a two-family dwelling must meet the standards of Section 3.2041, Design Review Standards. She stated that the design does not easily fit in with the other nearby traditional 1 ½ story single family residences.

Mr. Simpson stated that Section 3.204 states that the standards and principles “shall not be regarded as inflexible requirements and they are not intended to discourage creativity, invention or innovation”.

Mr. Simpson MOVED to close the evidentiary portion of the public hearing. Ms. Greenbaum seconded and the Board VOTED unanimously to close the evidentiary portion public hearing.

Ms. Greenbaum MOVED to continue the public meeting to October 8, 2009 at 7:00 P.M. Mr. Woodhull seconded and the Board VOTED unanimously to close the public hearing.

Public Meeting: October 8, 2009

Mr. Simpson asked the Board members if they were satisfied with the information received during the public hearing and whether anyone was opposed to the project. Ms. Greenbaum stated that she had serious reservations about this project and was disappointed with all the changes to the previously approved plans. She expressed concerns about the marketability and the long-term viability of the units but conceded that these issues are not the jurisdiction of the Zoning Board and therefore, not grounds for denying the Special Permit. Mr. Woodhull stated that he had reservations about the project being located in important salamander habitat and noted that the location is not a logical extension of the Cushman center, but found the project acceptable.

The Board discussed possible conditions for an approval and reviewed the findings required for the granting of a Special Permit.

Specific Findings:

As required in Section 3.321 of the Zoning Bylaw, two-family dwellings, the Board found under Section 3.204, Design Review Principles and Standards, that the project:

- Encourages creativity, invention and innovation by including green design and technology, such as passive solar heating and cooling, green roof, and incorporation of a two story design to reduce the size of the footprint of the structure;
- Includes unique architecture that represents a product of its time and the contemporary design does not destroy any existing historical, architectural or cultural material.

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses. One Board member noted the distance of the two-family dwelling from Cushman center. However, the Board found that the location of the two-family dwelling is suitable because the Zoning Bylaw does not require two family dwellings to be close to village centers and the property contains the required lot area for an additional dwelling unit in the R-N Zoning District. The Board found that the structure will appear from the street like a unitary building with two units sharing a common wall fulfilling the definition of a duplex in Section 12 of the Zoning Bylaw. Both units will be owner occupied.

10.382, 10.383 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site and will not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians. Conditions on the permit require adequate stormwater drainage for the common driveway, all exterior lighting must be downcast, and a reasonable effort shall be made to place utilities underground, as site conditions allow. Each of the two units will be owner occupied and two parking spaces are provided for each unit. The two-family dwelling will be accessed by a common driveway requiring a single street entrance to the property.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use. The proposal includes a common driveway to be designed in accordance with Section 7.7 of the Zoning Bylaw in terms of width, grade and other requirements. The proposal provides two parking spaces per unit in accordance with the requirements of the Zoning Bylaw. The property contains adequate lot area for the second dwelling unit in accordance with Table 3 of the Zoning Bylaw.

10.386 -- The proposal ensures that it is in conformance with the Parking and Sign regulations. The proposal provides two parking spaces for each unit in accordance with Section 7.000 of the Zoning Bylaw and there are no signs proposed.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes. The proposal provides a breezeway designed for the enclosed storage of refuse and recyclables associated with both units, and a Title 5 approved sanitary system.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting, because the conditions require that exterior lighting be downcast.

10.394 – The proposal avoids to the extent feasible, impact on steep slopes, floodplains, scenic views, grade changes and wetlands because, although there will be grading to construct the driveways and the dwelling units, the houses are sited to fit into the slopes that exist on the site and an effort will be made to retain existing trees along Henry Street.

10.396 – The proposal provides screening for storage areas because storage sheds will be incorporated and integrated into the design of the two-family dwelling.

10.398 – The proposal is in harmony with the general purpose and intent of this Bylaw and promotes the health safety, convenience and general welfare of the inhabitants of the Town of Amherst. The property contains the required lot area for a two-family dwelling in the R-N District, provides the required number of parking spaces, a common driveway, and meets all applicable requirements of Table 3 of the Zoning Bylaw. The proposal will provide housing at a more affordable rate than a standard single family dwelling and will incorporate green design and technologies.

Public Meeting – Zoning Board Decision

Ms. Greenbaum moved to APPROVE the application with conditions. Mr. Woodhull seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2010-00004, to construct a two-family dwelling, under Section 3.321 of the Zoning Bylaw, at 214 Henry Street (Map 6A-95, R-N & R-O Zoning District) with conditions.

THOMAS SIMPSON

HILDA GREENBAUM

ALBERT WOODHULL

FILED THIS _____ day of _____, 2009 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2009.

NOTICE OF DECISION mailed this _____ day of _____, 2009
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2009,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2010-00004, to construct a two-family dwelling, under Section 3.321 of the Zoning Bylaw, at 214 Henry Street (Map 6A-95, R-N & R-O Zoning District) with the following conditions:

1. The building shall be a unitary structure containing no more than two (2) dwelling units.
2. Each dwelling unit shall be owner-occupied.
3. **Prior to the issuance of a Building Permit** the following conditions shall be met:
 - a) A final set of floor plans and elevations, including labels and square footage for each room, egress and window locations and the entrance to the storage sheds, shall be submitted to the Board for review and approval at a public meeting.
 - b) Final site plans, including property dimensions, frontage and setback information, the footprints of the structure(s), the proposed paved areas, the common driveway including the easement or right-of-way on land of W. D. Cows, the area of trees to be removed, the location of the septic system leach field, existing topography, proposed grading and a landscape plan, shall be submitted to the Board for review and approval at a public meeting.
 - c) Evidence of an easement over the property of W. D. Cows Inc., or their assignees, sufficient to ensure access to the dwelling units shall be submitted to the Board for review and approval at a public meeting. Once approved, proof of filing with the Registry of Deeds shall be submitted to the Planning Department.
4. **Prior to the issuance of a Certificate of Occupancy** the following conditions shall be met:
 - a) Evidence of Condominium Association documents shall be submitted for review and approval by the Board at a public meeting. Once approved, proof of filing with the Registry of Deeds shall be submitted to the Planning Department.
 - b) A common driveway maintenance agreement (among the owners of the two units and W. D. Cows, or their assignees) shall be submitted for review and approval by the Board at a public meeting.
5. Any substantial changes to the approved plans shall be submitted to the Board for review and approval at a public meeting. The determination concerning whether or not a proposed change is substantial enough to require approval by the Board shall be made by the Building Commissioner.

6. The common driveway shall be designed and constructed in accordance with all applicable requirements of Section 7.7 of the Zoning Bylaw.
7. An animal-resistant enclosure shall be provided for trash and recyclables.
8. Any fuel tank(s) proposed in the future shall be underground and their location and design shall be shown on a revised site plan submitted to the Board for review and approval at a public meeting.
9. The storage sheds shall be enclosed, weather-tight structures that can be securely locked.
10. The exterior design of the two storage sheds shall be compatible with one another and with the exterior of the dwelling units.
11. A reasonable effort shall be made to place all utilities to the two-family dwelling underground, as site conditions allow.
12. All exterior lighting shall be downcast.
13. Reflective numbers indicating the street address shall be installed adjacent to Henry Street and shall be visible in both directions.
14. This permit is subject to Section 14 of the Zoning Bylaw, Phased Growth. Development authorization is available as of October, 2009.
15. This permit shall expire within two years of the date of filing with the Town Clerk if no substantial construction has commenced.

THOMAS SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE